



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

LVO/171161

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 04, 2016, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to the imposition of a levy, a hearing was held on February 04, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely.

NOTE: The record was held open to give MECA an opportunity to submit documentation showing that Petitioner did not receive W-2 checks at the time in question. On February 4, 2016, [REDACTED] submitted an e-mail with a five-page attachment, showing Petitioner's W-2 disbursement history. It has been marked as Exhibit 3 and entered into the record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED], DCF Program Supervisor  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 17, 2014, MECA sent the Petitioner a manual Child Care Client Overpayment Notice, advising her that she had been overpaid \$874.49 in benefits for the period of January 19, 2014 to January 31, 2014, because she failed to report a change in her employment. The notice was sent to the Petitioner at an address on [REDACTED] (Exhibit 2, pg. 1)
3. On July 18, 2014, MECA sent the Petitioner an automated notice of the same overpayment, claim # [REDACTED]. This notice was sent to Petitioner at the [REDACTED] address. (Exhibit 2, pgs. 3-4)
4. On August 4, 2014, the Public Assistance Collections Unit (PACU) sent the Petitioner a repayment agreement. It was sent to Petitioner at an address on [REDACTED] (Exhibit 2, pgs. 5-7)
5. On September 3, 2014, October 2, 2014, and November 4, 2014, PACU sent dunning notices to the Petitioner to remind her about the debt. The first and third notices were sent to the Petitioner at the address on [REDACTED] and the second notice was sent to her at an address on [REDACTED] (Exhibit 2, pgs. 8-10)
6. On February 22, 2015, PACU sent the Petitioner a levy notice, advising her that it was issue a levy upon all her property to recover the debt, which increased to \$905.49. This was sent to Petitioner at the [REDACTED] address. (Exhibit 2, pg. 11)
7. During the time in question, the Petitioner was transient. She lived at the [REDACTED] address until May 2014. She then lived with her mother on [REDACTED] from May 2014 to July 2014. She then moved to the address on [REDACTED]. The Petitioner also used the [REDACTED] address as a mailing address, because it is the address of her father's store. (Testimony of Petitioner)
8. On March 13, 2015, MECA sent the Petitioner a manual Child Care Client Overpayment Notice, advising her that she was overpaid \$3,813.02 in childcare benefits for the period of September 21, 2014 through October 31, 2014, because she failed to report a change in employment. This notice was sent to the Petitioner at the [REDACTED] address. (Exhibit 2, pgs. 12-13)
9. On March 16, 2015, MECA sent the Petitioner an automated notice of the same overpayment, claim [REDACTED]. This notice was sent to the Petitioner at the [REDACTED] address. (Exhibit 2, pgs. 14-15)
10. Petitioner received these overpayment notices and called the agency to inquire about the overpayment in April 2015. (Exhibit 2, pg. 27; Testimony of [REDACTED] and Testimony of Petitioner)
11. Petitioner's paychecks began being garnished in the spring of 2015. (Testimony of Petitioner)
12. The agency sent no repayment agreement or dunning notices to Petitioner, because the first overpayment was already in collections. (Testimony of [REDACTED])
13. On December 10, 2015, the agency sent the Petitioner a notice of Levy. The notice was sent to Petitioner's correct address on [REDACTED]. Petitioner received this notice, either through the mail or through her paycheck. (Exhibit 2, pg.16; Testimony of Petitioner)
14. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 4, 2015. (Exhibit 1)

**DISCUSSION**

Wis. Stats. §49.195(3) states that agencies, such as MECA, must determine when an overpayment in child care benefits has occurred and that it must, "promptly recover all overpayments".

Wis. Stats. §49.195(3n)(b) states:

If any debtor neglects or refuses to pay a debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the debtor. Whenever the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the person until the debt and expenses of the levy are fully paid.

Wis. Stats. §49.195(3s) states:

The department shall specify by rule when request for reviews, hearing and Appeals under this section may be made and the process to be used for the reviews, hearings and appeals. In promulgating the rules, the department shall provide for a hearing or reviews after a warrant under sub (3m) has been issued and before the a warrant has been executed, before property is levied under sub (3m) or (3n) and after levied property is seized and before it is sold. The department shall specify by rule the time limit for a request for review or hearing. The department shall also specify by rule a minimum amount that must be due before collecting proceedings under this section may be commenced.

Under Wis. Admin. Code §DCF 201.04(5)(ep) 4. a., “Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227, Stats, within 20 days from the date on the service of levy...”

PACU issued a notice of levy on December 10, 2015. The Petitioner testified that she received that notice. Indeed, she included a copy of the notice with her appeal letter. Unfortunately, the time for appealing the levy issued on December 10, 2015, has come and gone. The Petitioner needed to file an appeal of that action within 20 days, which put the appeal deadline at Wednesday, December 30, 2015. Petitioner did not file her appeal until January 4, 2016. As such, her appeal is untimely and no jurisdiction exists to review the merits of Petitioner’s appeal of the levy.

If the amount of the garnishment is causing a hardship, the Petitioner will have to negotiate directly with PACU. If Petitioner would like to seek out free / reduced cost legal assistance with this matter, she can try calling Legal Action of Wisconsin at (414) 278-7722.

### **CONCLUSIONS OF LAW**

Petitioner’s appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 8th day of April, 2016

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 8, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit